IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FERA APPEAL NO.19 OF 2006

1. Union of India through,
   Dy. Director of Enforcement,
   Directorate of Enforcement,
   (Foreign Exchange Management
   Act) having his office at
   Janmabhoomi Chambers,
   1st floor, Walchand Hirachand
   Marg, Mumbai - 400 001.

2. The Assistant Director,
   Directorate of Enforcement,
   (Foreign Exchange Management
   Act) having his office at
   Janmabhoomi Chambers,
   1st floor, Walchand Hirachand
   Marg, Mumbai - 400 001. .. Appellants.

V/s.

M/s.Bombay Dyeing Manufacturing
Co. Limited, Nieville House,
Kamani Road, Balard Estate,
Mumbai - 400 038 .. Respondent.

WITH
FERA APPEAL NO.20 OF 2006

1. Union of India through,
   Asstt. Director of Enforcement,
   Directorate of Enforcement,
   (Foreign Exchange Management
   Act) having his office at
   Janmabhoomi Chambers,
   1st floor, Walchand Hirachand
   Marg, Mumbai - 400 001. .. Appellant.

V/s.

M/s.Arvind Mills Limited,
Naroda Road, Ahmedabad .. Respondent.

WITH
FERA APPEAL NO.21 OF 2006

1. Union of India through,
   Asstt. Director of Enforcement,
   Directorate of Enforcement,
   (Foreign Exchange Management
   Act) having his office at
   Janmabhoomi Chambers,

1st floor, Walchand Hirachand
Marg, Mumbai - 400 001. .. Appellant.

V/s.

Shri Manubhai D. Shah
C/o.M/s.Arvind Mills Limited,
Naroda Road, Ahmedabad .. Respondent.

WITH
FERA APPEAL NO.22 OF 2006

1. Union of India through,
Asstt.Director of Enforcement,
Directorate of Enforcement,
(Foreign Exchange Management
Act) having his office at
Janmabhoomi Chambers,
1st floor, Walchand Hirachand
Marg, Mumbai - 400 001. .. Appellants.

V/s.

M/s.The Standard Mills Co. Ltd.
Mafatlal Centre, Nariman Point,
Mumbai - 400 020 .. Respondent.

WITH
FERA APPEAL NO.23 OF 2006

1. Union of India through,
Asstt.Director of Enforcement,
Directorate of Enforcement,
(Foreign Exchange Management
Act) having his office at
Janmabhoomi Chambers,
1st floor, Walchand Hirachand
Marg, Mumbai - 400 001. .. Appellant.

V/s.

Shri Arvind Narottam,
Managing Director M/s.Arvind
Mills Limited, Naroda Road,
Ahmedabad .. Respondent.

WITH
FERA APPEAL NO.53 OF 2006

1. Union of India through,
Asstt.Director of Enforcement,
Directorate of Enforcement,
(Foreign Exchange Management
Act) having his office at

Janmabhoomi Chambers,
1st floor, Walchand Hirachand
Marg, Mumbai - 400 001. .. Appellant.

V/s.

M/s.Mafatlal Fine Spg. & Mfg.
Co Ltd., Mafatlal Centre,
Nariman Point,
Mumbai - 400 023. .. Respondent.

WITH
FERA APPEAL NO.54 OF 2006

1. Union of India through,
Asstt.Director of Enforcement,
Directorate of Enforcement,
(Foreign Exchange Management
Act) having his office at
Janmabhoomi Chambers,
1st floor, Walchand Hirachand
Marg, Mumbai - 400 001. .. Appellants.

V/s.

M/s.Mafatlal Industries Limited
Mafatlal Centre, Nariman Point,
Mumbai - 400 038 .. Respondent.

WITH
FERA APPEAL NO.55 OF 2006

1. Union of India through,
Asstt.Director of Enforcement,
Directorate of Enforcement,
(Foreign Exchange Management
Act) having his office at
Janmabhoomi Chambers,
1st floor, Walchand Hirachand
Marg, Mumbai - 400 001. .. Appellants.

V/s.

M/s.Mafatlal Services Limited,
Mafatlal Centre, Nariman Point,
Mumbai - 400 023 .. Respondent.

Mr.R.V.Desai, Sr.Counsel with A.S. Rao with S.V.Bharucha and Dr.A.H.Bhatija i/b. T.C. Kaushik for appellant.

Mr.A.S.Doctor i/b. M/s.Kanga & Co. for respondents

in appeal Nos.19 to 23 of 2006.

Shri Gaurav Joshi with Mohan Salian & B.Das i/b. Gagrat & Co. for respondents in appeal Nos.53 to 55 of 2006.

CORAM : F.I. REBELLO & J.P. DEVADHAR, JJ.

JUDGMENT RESERVED ON : 27TH JULY, 2007.

JUDGMENT PRONOUNCED ON : 23RD AUGUST, 2007.

ORAL JUDGMENT : (Per J.P. Devadhar, J.)

1. Heard.

2. In all these Appeals the revenue is aggrieved by the common order passed by the Appellate Tribunal for Foreign Exchange on 12th May, 2003. By the said order, the Tribunal has set aside the penalties imposed upon the respondents under the provisions of FERA 1947 & FERA 1973.

3. According to the revenue, the facts of the case clearly show that the respondent/assessee had made payments to a foreign company through an Indian company in contravention of FERA and, therefore, the penalties levied upon the respondents ought to have been upheld by the Tribunal.

4. The controversy in all these appeals being common, all these appeals are heard and disposed of by this common order. Although facts in all these

cases are not in dispute, for easy understanding of the dispute between the parties, we may note few facts set out in FERA Appeal No.19 of 2006.

5. The respondent / assessee in FERA Appeal No.19 of 2006 is a Textile Mill. M/s.Tootals Broadhurst lee co. Limited, Manchester, London (hereinafter to be referred as "Tootals") incorporated in London are world renowned manufacturers of textiles. Tootals were originators and inventors of the world famous crease resisting process known as "tebilized" process having registered trade mark. The assessee desirous of acquiring technical know how relating to the manufacture and treatment of textile materials by the above method entered into a collaboration agreement with Tootals on 10th April, 1961 whereunder Tootals agreed to supply technical know how of tebilized process on the conditions set out in the said agreement. Consideration for supply of technique and services to be rendered by Tootals was termed as royalty.

6. On 7th November, 1960, the Government of India approved the above agreement only for the period from 10th April, 1961 to 10th August, 1969. Accordingly, the aforesaid collaboration agreement came to an end on 10th April, 1969. The assessee

applied for renewal of the agreement and pending decision of the renewal, Tootals continued to render services as per the agreement.

7. M/s.Mettur Beardsel Limited (hereinafter to be referred to as "MBL"), an Indian company was registered in the year 1926. Tootals at the relevant time had 48% share holding in MBL.

8. It is the case of the assessee that MBL was in possession of the technical know-how relating to tabilized process from Tootals and accordingly the assessee entered into an agreement with MBL on 29th December, 1970 and on receipt of the technical know-how made payments to MBL as per the agreement dated 29th December, 1970.

9. According to the revenue the payments made by the respondent to MBL were in fact payments made to Tootals for rendering the services without the approval of RBI. Accordingly, show cause notices were issued and penalty was imposed upon the assessee and its directors. On appeal, the Tribunal set aside the penalty. Hence, these appeals.

10. Mr.Desai, learned Senior Advocate strongly urged before us that in the present case, instead of making payments to Tootals, a foreign company, the

assessee had made payments to MBL which is an Indian subsidiary of Tootals. Such payment was not approved by R.B.I. Therefore, there was clear violation of the provisions of FERA. Under Section 5 of FERA, any payment made to an Indian party for and on behalf of a foreign party without the general or special permission of the R.B.I. is punishable. In the present case, the Tribunal without giving any reasons has set aside the adjudication order. Accordingly, Mr.Desai submitted that the order of the Tribunal suffers from serious infirmities and the said order is liable to be quashed and set aside.

11. Mr.Dada, learned Senior Advocate, appearing on behalf of the assessee, took us through the reasoning given by the Tribunal for setting aside the penalty and submitted that in view of the overwhelming evidence on record the Tribunal was justified in deleting the penalty.

12. We have carefully considered the rival submissions. In the present case, on consideration of incriminating letters and documents provided by MBL, the Tribunal held that there is strong indication that Tootals had some interest in the transaction with MBL but it is not clear that Tootals were the ultimate beneficiaries. In the

absence of any direct or indirect evidence in that regard, the Tribunal held that the inference drawn by the Special Director is based on suspicion and not on a positive material.

13. The further finding of fact recorded by the Tribunal is that the agreement between the assessee and MBL was valid and legal agreement and the payments made by the assessee in Indian rupee to MBL did not require approval of R.B.I. The Tribunal has recorded a finding that Tootals had only 48% share in MBL and not control over MBL. The fact that the Tootals permitted MBL to render technical services and advertise the trade mark in India and charge service fee etc. cannot be construed to mean that MBL received payment for and on behalf of the Tootals. The Tribunal had recorded a finding that there is no evidence or any finding that any dividend was received by Tootals from MBL.

14. All the above findings recorded by the Tribunal are findings of facts and those findings do not give rise to any question of law much less a substantial question of law.

15. Accordingly, we do not find any merit in these appeals and the same are hereby dismissed.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)